



Federal Communications Commission  
Washington, D.C. 20554

March 29, 2019

DA 19-233

**VIA ELECTRONIC MAIL**

Russell D. Lukas  
8300 Greensboro Drive  
Suite 1200  
Tysons, Virginia 22102  
rlukas@fcclaw.com

Re: FOIA Control No. 2017-672

Mr. Lukas:

This letter dismisses your Application for Review<sup>1</sup> seeking review of the decision of the Wireline Competition Bureau (Bureau) denying in part your Freedom of Information Act (FOIA) request for an unredacted copy of an appeal filed by Windstream Communications, LLC, of a decision by the Universal Service Administrative Company (USAC) to deny Rural Health Care Telecommunications Program funding.<sup>2</sup> Section 0.251(j) of the Commission's rules delegates authority to the General Counsel, among other things, "to dismiss FOIA applications for review that are untimely, repetitious, or fail to articulate specific grounds for review."<sup>3</sup> As explained below, your Application for Review is moot because it challenges the Bureau's redaction of information that you have subsequently obtained or that you no longer seek under the FOIA. For this reason, and because it depends in part on arguments that are beyond the scope of this FOIA proceeding, it "fail[s] to articulate specific grounds for review."

In a supplemental response to your FOIA request on November 21, 2018, the Bureau applied Exemption 4 to limited portions of Exhibit E of the Windstream Appeal, and explained that your FOIA request has otherwise been fulfilled because you have been

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<sup>1</sup> See Application for Review of Freedom of Information Action by Russell D. Lukas, Lukas, LaFuria, Gutierrez & Sachs, LLP (filed October 31, 2017); Amendment to Application for Review of Freedom of Information Action by Russell D. Lukas (filed May 17, 2018); Supplement to Application for Review of Freedom of Information Action by Russell D. Lukas (filed July 30, 2018). Although untimely filed, we include the Amendment and Supplement in the record of this proceeding in the interest of updating the record. For simplicity, we refer to the filings collectively as the Application for Review.

<sup>2</sup> FOIA 2017-672 filed by Russell D. Lukas (May 24, 2017), seeking "the request for review or appeal filed by Windstream Communications, LLC ("Windstream") with the Universal Service Administrative Co. (USAC) ... [concerning] The Burke Center-West Austin Street FCC Forms 465 No. 43144429 and 43155674, Trinity Valley Community College FCC Forms 465 Nos. 43133868, ..., UTHSCT on behalf of ETIHN-Andrews Center FCC Form 465 No. 43155889 ... filed...by Latham & Watkins LLP on or about May 12, 2017. We refer to the document at issue as the Windstream Appeal.

<sup>3</sup> 47 CFR § 0.251(j).

provided with all other relevant information that the Bureau initially redacted.<sup>4</sup> You did not seek review of the Bureau's November 21, 2018 decision. Accordingly, your Application for Review is moot because, even if it were to be granted, you would not receive any information that is not already in your possession.<sup>5</sup>

To the extent that you seek information on grounds other than the FOIA, these arguments are beyond the scope of this FOIA proceeding and, for that reason as well, "fail to articulate specific grounds for review."<sup>6</sup> Relatedly, your assertions that USAC records are not subject to the FOIA fail to state a ground for relief because, if accepted, they would deprive you of any access under the FOIA to the records you requested.<sup>7</sup>

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.<sup>8</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12<sup>th</sup> St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to [FOIA-Appeal@fcc.gov](mailto:FOIA-Appeal@fcc.gov). Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action."

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison  
Federal Communications Commission, Office of the Managing Director,  
Performance Evaluation and Records Management  
445 12<sup>th</sup> St SW, Washington, DC 20554  
202-418-0440  
[FOIA-Public-Liaison@fcc.gov](mailto:FOIA-Public-Liaison@fcc.gov)

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<sup>4</sup> Letter to Russell D. Lukas from Kirk Burgee, Wireline Competition Bureau at 2 (dated November 21, 2018). *See also id.* at n.4 (noting your acknowledgment that you had received all information you sought with the exception of Exhibit E and your disclaimer of interest in certain email addresses and signatures that had been redacted).

<sup>5</sup> *See, e.g., David A. Larson*, 25 FCC Rcd 11094, 11095 para. 5 (2010) (application for review dismissed after submitter of asserted confidential information disclosed it to requester voluntarily); *John Flynn*, 4 FCC Rcd 2286 (1989) (application for review dismissed as moot without addressing the merits because requester no longer sought information at issue).

<sup>6</sup> These asserted legal grounds include section 54.721(d) of the Commission's rules, the Commission's *ex parte* rules, and the Due Process Clause of the Fifth Amendment to the Constitution.

<sup>7</sup> We also note that your 51-page request for review exceeds, by more than double, the 25-page limit in section 1.115(f) of the Commission's rules, 47 CFR § 1.115(f). *See Skybridge Spectrum Foundation, Warren Havens, On Request for Inspection of Records*, 28 FCC Rcd 13539 (2013) (dismissing as unacceptable for filing 35-page application for review). The summary of the Application for Review consists of six additional pages, which also exceeds the guidelines in our rules. *See* 47 CFR § 1.49(c).

<sup>8</sup> 47 CFR §§ 0.461(j), 1.115; 47 CFR § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road—OGIS  
College Park, MD 20740-6001  
202-741-5770  
877-684-6448  
[ogis@nara.gov](mailto:ogis@nara.gov)  
[ogis.archives.gov](http://ogis.archives.gov)

Sincerely,

Thomas M. Johnson, Jr.  
General Counsel

cc: FCC FOIA Office